

§ 24-1.1F. Rate spread home loans.

- (a) Repealed by Session Laws 2013-399, s. 3, effective October 1, 2013.
- (a1) A rate spread home loan is a loan that has an annual percentage rate that exceeds the limits set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) and any regulations promulgated thereunder.
- (b) Repealed by Session Laws 2013-399, s. 3, effective October 1, 2013.
- (b1) The making of a rate spread home loan that violates 15 U.S.C. § 1639c(a) and any regulations promulgated thereunder is hereby declared usurious in violation of the provisions of this Chapter.
- (c) Repealed by Session Laws 2013-399, s. 3, effective October 1, 2013.
- (c1) Any prepayment penalty in violation of 15 U.S.C. § 1639c(c) and any regulations promulgated thereunder shall be unenforceable.
- (d) Repealed by Session Laws 2013-399, s. 3, effective October 1, 2013.
- (d1) Notwithstanding the foregoing, a borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of this section. This section establishes specific consumer protections in rate spread home loans in addition to other consumer protections that may be otherwise available by law. A mortgage broker who brokers a rate spread home loan that violates the provisions of this section shall be jointly and severally liable with the lender.
- (e) The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (ii) any other such subterfuge.
- (f) A lender in a rate spread home loan who, when acting in good faith, fails to comply with this section, will not be deemed to have violated this section if the lender establishes that either:
 - (1) Within 90 days of the loan closing and prior to the institution of any action against the lender under this section, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c), or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice; or
 - (2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within 120 days after the discovery of the compliance failure and prior to the institution of any action against the lender under this section or the lender's receipt of written notice of the compliance failure, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice. Examples of a bona fide error include clerical, calculation, computer malfunction and programming,

and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(g) The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. (2007-352, s. 4; 2008-228, s. 16; 2009-457, s. 2; 2013-399, s. 3.)